No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States.*

Because of this, their experience is valuable to people of foreign States, who also act, when they act, within their States. Each State of the American Union has two constitutions. One is local, dealing with those matters that begin and end within the boundaries of the State. It may be amended whenever the people so desire. The second constitution is not local, but general. It deals with matters that may begin within a State and extend beyond it, or which arise without the States and yet affect them, as in the case of foreign affairs. This Constitution is the Constitution of the United States, ratified by each of the States, and declared by article 6, section 2, thereof to be the supreme law of each of the States. It cannot be amended, or modified, or varied by any State. They adopted the Constitution as a whole, article 5 of which provides that amendments to the Constitution, to be effective, must be "ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof." The Constitution is not, therefore, to be like the law of the Medes and the Persians. It changes with the changing moods of three-fourths of the States.

The States created the Government of the United States as their agent for the purposes which they stated expressly or by necessary implication, and for none others. Additional powers may be added by amendment. The legislative branch, consisting of a Senate and a House of Representatives, has certain specified powers; the executive branch, whereof the President is the head, has prescribed duties; the judicial branch, of which the Supreme Court is the head, has certain jurisdiction. Any group of foreign States wishing to follow the example of the American States can. They do not need to confide so many powers upon the government of their creating unless they want to do so. But there are two things of fundamental importance which they should do, if they want their union to outlive its makers: they should eliminate the question of large and small States, as the wise men of the Federal Convention did, by providing that one of the chambers, which we call the Senate, should represent the States equally, and that a second chamber, which we call the House of Representatives, should represent the States according to population. In this way each branch would have a veto upon the abuse of power by the other, and by means of a conference committee between the two houses there would be passed, under the pressure of public opinion, such legislation as was needed.

The second requisite is that, to the extent of its granted powers, the government of the union should act upon each member of the State. States cannot act of themselves; they must act by agents. An agent attempting to do an act contrary to the fundamental law can be restrained. As the act, therefore, is not committed by the State, but by an individual, the State is not involved; merely the person claiming authority which he does not possess, whether that be under the statute of a State in conflict with the act of union or due to a false interpretation of the act of union. This simple principle, new in political science when it was devised by the wise men of the Federal Convention, has made it unnecessary to coerce sovereign States, which the wisest of that assembly—Messrs. Mason and Madison, Hamilton and Ellsworth—knew was impossible, and said so, both in and out of convention.

To interpret the act of union, and in so doing to assure to the government of the Union its full rights; to protect the States of the Union in the exercise of their rights and to define the duties of each in their appropriate spheres, we have the Supreme Court of the United States.

The nations have made a beginning. We are familiar with conferences at The Hague. They can meet at stated intervals, submitting their acts to each nation for ratification and binding only those that so ratify. This would prove itself to be, in the course of time, no mean legislature. A committee appointed by the nations might act in the interval of the conference and exercise such powers with which the nations in conference should vest it. A court of the nations could be created—indeed, it apparently has been created by act of the Assembly of the League of Nations on the 13th of December, 1920.

If Europe should wish to follow Dr. Franklin's advice, the way is still open. Should all the nations wish to follow in the footsteps of the conferences which have met at The Hague, and, without creating a close union, organize the world upon the basis of justice and the rules of law, this can also be done.

In either event the experience of the United States will be helpful. For this country of ours was founded, as James Russell Lowell has so beautifully said, "By men with empires in their brains."

* *McCullough* v. *Maryland*, 4 Wheaton, 316, 403.

LAW IN WAR TIME

IN HARMONY with most of its previous decisions on the validity of the Espionage Act, the Federal Supreme Court has just upheld the late Postmaster General, Mr. Burleson, in his exclusion from the mails of the *Milwaukee Leader* and *New York Call* during certain periods of the war. The majority of the court holds that the tendency of the articles that brought on the withdrawal of second-class mail privileges was not to secure a modification or repeal of the laws they criticized, but were intended to "create a spirit of insubordination and disloyalty." Justices Holmes and Brandeis again dissented, as they have in prior cases. They claim that if administrative officers in times of peace can discriminate against publications on grounds approved by a majority of the court, then "there is little substance to our Bill of Rights, and in every extending governmental function lurks a new danger to civil liberties."

The question here involves the loyalty of the judiciary to the other two branches of government in war time. If we grant that it is even proper for a government to engage in war, we must then consent to the abrogation of constitutional government in every respect found to be necessary for the successful conduct of the war. War law is *sui generis*.